



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept.	A	Contract Number			
County Department Real Estate Services Department			Dept.	Orgn.	Contractor's License No.			
County Department Contract Representative David H. Slaughter, Director			Telephone 387-7813		Total Contract Amount			
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. 59N31840	Amount		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
Project Name Redlands - Preschool Services Department			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D
Contract Type - 2(d)								

CONTRACTOR A.K. S. and BEK Partnership, General Partnership

Federal ID No. or Social Security No. Ron Shahbandi, Partner

Contractor's Representative _____

Address 5562 Santa Ana Canyon Road, Anaheim Hills, CA 92807

Phone (909) 793-6675

Nature of Contract: *(Briefly describe the general terms of the contract)*

This Lease Contract is for a period of ten (10) years with two (2) five-year options to extend. Leased premises consist of 10,524 square feet with build-to-suit offices and 10,300 square feet of playground. Rental is \$1.30 per square foot/modified gross per month.

LANDLORD shall provide all exterior maintenance to include grounds, parking lot maintenance and exterior lighting. LANDLORD to pay water, trash, fire alarm service and sewer. LANDLORD shall pay for all interior utilities, electrical and gas. COUNTY to provide for janitorial service, vending machines, security and its own telephone service including pay telephones.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink) ▶ SEE SIGNATURE PAGE County Counsel Date _____	Reviewed as to Contract Compliance ▶ Date _____	Presented to BOS for Signature ▶ Department Head Date _____
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Auditor/Controller-Recorder Use
Only

<input type="checkbox"/> Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

COUNTY OF SAN BERNARDINO

LEASE AGREEMENT

LANDLORD: A.K.S. and BEK Partnership, a General Partnership
5562 Santa Ana Canyon Road
Anaheim Hills, CA 92807

COUNTY: COUNTY OF SAN BERNARDINO
Real Estate Services Department
825 East Third Street
San Bernardino, CA 92415-0832

PREMISES: 1811 W. Lugonia Avenue
Redlands, CA 92374

TERM OF LEASE: Ten (10) years with two (2) five-year options

COMMENCEMENT DATE OF LEASE: July 1, 2005

COST PER SQUARE FOOT: \$1.30 - modified gross

COUNTY CONTRACT NUMBER:

REV: 1/16/03 (110568.11)

TYPED: 3/26/2004

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LEASE AGREEMENT

1. **PARTIES:** This lease ("Lease") is made between A.K.S. and BEK Partnership, a General Partnership ("LANDLORD"), and the County of San Bernardino ("COUNTY"), who agree as follows:

2. **PREMISES LEASED:** LANDLORD leases to COUNTY and COUNTY leases from LANDLORD 10,524 square feet of building and 10,300 square feet of playground, real property, and other improvements, with fifty-four (54) parking spaces, including handicapped parking, located at 1811 W. Lugonia Avenue, California ("Premises"), as described in Exhibit "A", Premises Specifications.

3. **TERM:**

a. **Initial Term.** The Lease's initial term ("Initial Term") shall commence on July 1, 2005 ("Commencement Date") and end on June 30, 2015 ("Ending Date"), provided that all Improvements to be constructed by LANDLORD are substantially completed and are accepted by COUNTY pursuant to **Paragraph 41, LANDLORD IMPROVEMENTS**. For the purposes of this Lease, "Substantially Completed" shall mean that the Premises can be used for their intended purposes and have been certified for occupancy by the entity that issued the building permits, notwithstanding those minor corrections and/or additions remain to be completed, it being understood that LANDLORD shall promptly complete said corrections and/or additions. In the event the term commences prior to the Commencement Date as the result of COUNTY's election under **subparagraph 3c, Early Possession**, the Ending Date shall not be changed. If LANDLORD is unable to Substantially Complete the Improvements or deliver possession of the Premises by the Commencement Date, COUNTY shall not be liable for any rent and this Lease shall not commence until LANDLORD Substantially Completes the Improvements and delivers possession of the Premises to COUNTY. Any such delay in possession shall not affect the Ending Date.

b. **Early Access.** LANDLORD shall allow the COUNTY early access ("Early Access") to the Premises at any time prior to the Commencement Date for the purpose of the COUNTY or its representatives installing communications equipment, modular furniture, alarms and such other items that the COUNTY may reasonably desire and to inspect the status of the construction of the Improvements for the Premises. COUNTY shall exercise its Early Access rights at a time and in a manner that will not unreasonably interfere with LANDLORD's construction of the Improvements. If COUNTY totally or partially occupies the Premises under this Early Access provision prior to the Commencement Date, the obligation to pay rent shall be abated for the period of the Early Access. All other terms of this Lease shall, however, be in effect during such period. Any such Early Access shall not affect the Commencement Date or the Ending Date.

c. **Early Possession.** The COUNTY may elect to totally or partially take possession of the Premises at any time prior to the scheduled Commencement Date ("Early Possession"). COUNTY shall exercise its Early Possession rights at a time and in a manner that will not unreasonably interfere with LANDLORD's construction of the Improvements. If COUNTY totally or partially takes possession of the Premises under this Early Possession provision prior to the Commencement Date, the obligation to pay rent for only that portion of the Premises possessed shall commence for the period of

such Early Possession. Such Early Possession shall not be considered as the COUNTY's acceptance of any portion of the Improvements as Substantially Completed. The COUNTY may vacate all or any portion it has possessed as Early Possession without in any manner affecting the Commencement Date, the Ending Date or any other portion of the Lease. All other terms of this Lease shall, however, be in effect during such period. Any such Early Possession shall not affect the Commencement Date or the Ending Date.

d. Delay in Possession. LANDLORD agrees to use all commercially reasonable efforts to deliver possession of the Premises with all of the Improvements Substantially Completed to COUNTY by the Commencement Date. If as a result of causes beyond LANDLORD's reasonable control, LANDLORD is unable to deliver possession as agreed, this Lease shall not be voidable, nor shall such failure affect the validity of this Lease. If possession is not delivered within ninety (90) days after the Commencement Date, COUNTY can elect to terminate this Lease by giving written notice to LANDLORD at any time before LANDLORD delivers possession of the Premises to COUNTY. If COUNTY elects to terminate this Lease pursuant to this provision, COUNTY shall be discharged of all obligations under this Lease.

4. **RENT:**

a. COUNTY shall pay to LANDLORD monthly rental payments in arrears on or before the last day of each month following the Commencement Date. During the first year of this Lease, the monthly rental payment shall equal Thirteen Thousand Six Hundred Eighty-one and 00/100 Dollars (\$13,681.00). The monthly rental payment of Thirteen Thousand Six Hundred Eighty-one and 00/100 Dollars (\$13,681.00 - \$1.30/sq.ft.) is comprised of a base monthly rental rate in the amount of Twelve Thousand One Hundred Three and 00/100 Dollars (\$12,103.00 - \$1.15/sq.ft.) and an amount for amortized Improvements cost reimbursement consistent with **Paragraph 41, LANDLORD IMPROVEMENTS**, of One Thousand Five Hundred Seventy-nine and 00/100 Dollars (\$1,579.00 - \$.15/sq.ft.). The monthly amount for reimbursement for Improvements of One Thousand Five Hundred Seventy-nine and 00/100 Dollars (\$1,579.00 - \$.15/sq.ft.) shall remain the same for the entire Initial Term. The base monthly rental rate Twelve Thousand One Hundred Three and 00/100 Dollars (\$12,103.00 - \$1.15/sq.ft.) amount shall be subject to annual adjustment on the anniversary of the Commencement Date and each year thereafter based on the greater of the change in the Consumer Price Index as provided below or three percent (3%) over the rent during the first year of the Lease.

The base for computing the adjustment is the Consumer Price Index ("C.P.I."), Pacific Cities and U.S. City Average, All Items, Los Angeles, Anaheim and Riverside, Urban Wage Earners and Clerical Workers (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect two (2) months prior to the date of the commencement of the initial term ("Beginning Index"). The Index in effect two (2) months prior to the adjustment date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the monthly rent in effect at the beginning of the Initial Term by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Notwithstanding any other provision of this Lease, in no case shall the adjusted rent be more

than four percent (4%) greater than the rent in effect immediately prior to the adjustment date then occurring. If the Index is changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

b. Rent for any partial month shall be prorated based on the actual number of days of the month. All rent shall be paid to LANDLORD at the address to which notices to LANDLORD are given.

c. If the COUNTY has accepted the Premises as Substantially Completed with minor corrections and/or additions remaining to be completed, only eighty percent (80%) of the monthly rental will be paid to LANDLORD, and the remaining twenty percent (20%) of the monthly rental will accrue from the Commencement Date of this Lease but will not be paid to LANDLORD until all such minor corrections and/or additions have been completed and accepted by COUNTY. If the COUNTY withholds monthly rental payments under this subparagraph, the COUNTY will not be in default and no interest or service charges will be added to the amounts due LANDLORD upon completion of the minor corrections and/or additions. The minor corrections and/or additions remaining to be completed are subject to **subparagraph 13b, MAINTENANCE**.

5. **EXPANSION OF RENTAL SPACE:** There is no expansion space available in this Lease.

6. **OPTION TO EXTEND TERM:**

a. LANDLORD gives COUNTY the option to extend the term of the Lease on the same provisions and conditions, except for the monthly rent, for two (2) five-year periods (collectively referred to as "extended terms") following expiration of the initial term, by COUNTY giving notice of its intention to exercise the option for one or both extended term to LANDLORD prior to the expiration of the preceding term or during any holding over pursuant to **Paragraph 8, HOLDING OVER**. The rent for each extended term shall be adjusted by good faith negotiation of the parties to the fair market rental rate then prevailing based upon the rental rates of comparable leased property in San Bernardino County.

If the parties have been unable to agree upon the said fair market rental rate within five (5) months of the COUNTY's notice to exercise an option for an extended term, said fair market rental rate shall be determined through arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. If the fair market rental rate is determined by arbitration, the COUNTY has the right to terminate the Lease by giving termination notice to the LANDLORD within thirty (30) days of being notified of the new fair market rental rate.

(1) The negotiations and any dispute resolution method used will be guided by the fact that the monthly rent in **Paragraph 4, RENT**, includes amounts for basic rent for space and

payment for building Improvements made by LANDLORD under **Paragraph 41, LANDLORD'S IMPROVEMENTS.** The basic rent for space starts at One Dollar and Fifteen Cents (\$1.15) per square foot and increases at the rate of the Consumer Price Index. All LANDLORD amortized Improvements of One Thousand Five Hundred Fifty-eight and 00/100 Dollars (\$1,558.00 - \$.15/sq.ft.) will have been paid for within the Initial Term and no further payment for these Improvements will be made by COUNTY. The negotiated/arbitrated rent shall be based upon the basic rental rate for space and shall not include any rental amount for the LANDLORD's Improvements nor for the playground, which shall continue as an in-kind contribution for the LANDLORD.

7. **RETURN OF PREMISES:** The COUNTY agrees that it will, upon any termination of this Lease, return the Premises in as good condition and repair as the Premises now are or shall hereafter be put; reasonable wear and tear excepted.

8. **HOLDING OVER:** In the event the COUNTY shall hold over and continue to occupy the Premises with the consent of the LANDLORD, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed and prevailed at the time of the expiration of the term of this Lease.

9. **TAXES:** LANDLORD shall pay all real property taxes, and general and special assessments levied and assessed against the Premises.

10. **USE:** COUNTY shall occupy and use the Premises during the term hereof for the purposes of COUNTY business.

11. **HEALTH, SAFETY AND FIRE CODE REQUIREMENTS:** As a condition precedent to the existence of this Lease, LANDLORD, at its sole expense will ensure the Premises meet the applicable requirements of the Health, Safety, Fire and Building Codes for public and governmental buildings, including any requirements for a notice of completion, certificate of occupancy and the Americans with Disabilities Act ("ADA"). Additionally, LANDLORD warrants that any improvements on or in the Premises which have been constructed or installed by LANDLORD or with LANDLORD's consent or at LANDLORD's direction shall comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. LANDLORD also warrants to COUNTY that LANDLORD has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable building codes, regulations, or ordinances exist with regard to the Premises as of the Commencement Date. Further, LANDLORD shall ensure that all computer controlled Premises components (except those owned by the COUNTY, if any) are Year 2000 compliant prior to acceptance of the Premises for occupancy by the COUNTY. The LANDLORD must verify compliance by physical testing and/or written confirmation from the component and/or systems manufacturer. "Computer controlled Premises components" refers to software driven technology and embedded microchip technology. This includes, but is not limited to, programmable thermostats, HVAC controllers, auxiliary elevator controllers, utility monitoring and control systems, fire detection and suppression systems, alarms, security systems and any other Premises control systems utilizing microcomputer, minicomputer, or programmable logic controllers. "Year 2000 compliant" means

computer controlled Premises components that accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Should the continued occupancy of the leased Premises be in any way prejudiced or prevented due to changes in the ADA or the Health, Safety or Fire Codes for Public Buildings, the LANDLORD herein shall correct, update and comply with said changes at LANDLORD's cost. Upon completion of repair/replacement to effect Year 2000 compliance, the LANDLORD shall verify compliance by physical testing and/or written confirmation from the component and/or systems manufacturer and advise the COUNTY that such replacement components have been verified as compliant.

12. **SIGNS:** COUNTY will display from the windows and/or marquee of the Premises only such sign or signs as are not prohibited by law.

13. **MAINTENANCE:**

a. LANDLORD at its cost shall perform such inspections, maintenance and repairs as are necessary to ensure that all portions of the Premises, including but not limited to the following, are at all times in good repair and safe condition:

(1) The structural parts of the building and other improvements that are a part of the Premises, which structural parts include the foundations, bearing and exterior walls (including glass and doors), subflooring, and roof; and,

(2) The electrical, plumbing, and sewage systems, including, without limitation, those portions of the systems owned or controlled by LANDLORD lying outside the Premises; and,

(3) Window frames, gutters, and downspouts on the building and other improvements that are a part of the Premises; and,

(4) Heating, ventilation and air conditioning (HVAC) systems servicing the Premises additionally, air-conditioning and heating filters are to be changed quarterly. Upon commencement of this lease agreement and every three (3) years thereafter, LANDLORD is to provide an air balance certificate and maintenance of HVAC servicing); and,

(5) The grounds, including all parking areas and outside lighting, grass, trees, shrubbery and other flora; and,

(6) The servicing of fire extinguishers or any other fire suppression equipment attached to the facility; and,

(7) Interior maintenance services must be performed in a workman-like manner by a licensed and qualified independent contractor. LANDLORD shall perform interior maintenance at a time and in a manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY.

(8) Maintenance services must be performed in a workman-like manner by licensed and qualified independent contractors, as set forth in Exhibit "B", Licensed Maintenance Contractor Service. LANDLORD shall perform maintenance service at a time and in manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY. LANDLORD shall follow the carpet manufacture's maintenance requirements and maintain the carpet manufacture's warranty for the carpet.

(9) During the seventh (7th) year of the initial term and at the beginning of every seventh (7th) year thereafter, replace the carpet throughout the facility, meeting the same criteria as originally described in Exhibit "A", Premises Specifications; and,

(10) During the third (3rd) year of the initial term and at the beginning of every (3rd) year thereafter, repaint the interior of the facility, meeting the same criteria as originally described in Exhibit "A", Premises Specifications; and,

b. Without in any way affecting LANDLORD's duty to inspect, maintain and repair the Premises and regardless of whether any specific notice of need for maintenance or repair is provided to LANDLORD by the COUNTY, the COUNTY may request specific maintenance or repairs. Any such request may be made orally, by telephone or otherwise. If, (a) COUNTY gives notice to LANDLORD of a condition requiring maintenance or repairs, and LANDLORD does not commence the performance of its maintenance or repair obligations within ten (10) days of receiving such notice, or does not diligently prosecute its obligations to completion thereafter, or (b) in the case of an emergency, whether or not COUNTY has given notice to LANDLORD, LANDLORD does not immediately perform its obligations, COUNTY can perform the obligations and have the right to be reimbursed for the sum COUNTY actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. The sum expended by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld.

c. COUNTY, at its cost, shall provide janitorial services, and keep the interior of the Premises in a clean and orderly condition, reasonable wear and tear excluded.

d. COUNTY, at its option and sole discretion, reserves the right to require the LANDLORD to hire a qualified property management company to manage the Premises, and that property management services, not limited to maintenance and repair, be performed pursuant to a property management agreement. The Premises must be inspected by the Property Manager at least

every other week, beginning the second week after the commencement date, and daily by the janitorial staff, to ensure the Premises are maintained properly. Inspections must be coordinated with the COUNTY representative. The COUNTY has the right to review the selection of the property manager and to review the agreement with the manager.

14. **ALTERATIONS:** COUNTY shall not make any structural or exterior improvements or alterations to the Premises without LANDLORD's consent. Any such alterations shall remain on and be surrendered with the Premises on expiration or termination of the Lease.

15. **FIXTURES:** COUNTY shall have the right during the term(s) of this Lease to install shelving and fixtures, and make interior, non-structural improvements or alterations in the Premises. Such shelving, fixtures, improvements, and alterations shall remain the property of the COUNTY and may be removed by the COUNTY during the term(s) of this Lease or within a reasonable time thereafter, provided that the COUNTY restores the Premises to the condition as it existed at the commencement of this Lease, reasonable wear and tear excluded, or the COUNTY in its sole discretion may elect to surrender all or any part of such shelving, fixture, improvements and alterations to the LANDLORD, in which case COUNTY shall have no duty to restore the Premises. Any such election to surrender must be in writing, but need not be accepted by LANDLORD to be effective.

16. **UTILITIES:** LANDLORD shall furnish to the Premises and pay all service charges and related taxes for electric, gas, water, sewer, trash, fire alarm service and all other utilities. COUNTY shall furnish and pay for security, vending machines and its own telephone service including pay telephones.

17. **HOLD HARMLESS:** The LANDLORD agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY, its authorized officers, agents, volunteers and employees, from any and all claims, demands, actions, losses, damages, liability, and/or for any costs or expenses incurred by the COUNTY arising out of: (a) any improvements constructed by the LANDLORD pursuant to the Lease; (b) the LANDLORD's acts and omissions in connection with its ownership of the property; (c) the use of common areas and leasehold spaces other than the Premises; and (d) toxic waste and environmental contamination not resulting from the COUNTY's use of the Premises, except where such indemnification is prohibited by law. The LANDLORD's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence, but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. The LANDLORD's indemnification obligation shall survive the COUNTY's tenancy. The insurance provisions in **Paragraph 18, INSURANCE**, shall not be interpreted in a manner that limits the indemnification obligation.

18. **INSURANCE:**

- a. COUNTY is a public entity and is self-insured.

b. Without in any way affecting the indemnity herein provided and in addition thereto, the LANDLORD shall secure and maintain throughout the Lease the following types of insurance with limits as shown:

(1) Workers' Compensation: A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) limits, covering all persons providing services on behalf of the LANDLORD and all risks to such persons under this agreement.

If LANDLORD has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Risk Manager.

If LANDLORD is a non-profit corporation organized under California or Federal law, volunteers for the LANDLORD are required to be covered by Workers' Compensation insurance. If the COUNTY's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

(2) Comprehensive General and Automobile Liability Insurance: This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00).

(3) Fire Insurance: Standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of the full replacement value of the Premises.

c. Additional Named Insured: All policies, except for Workers' Compensation, shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of this agreement.

d. Waiver of Subrogation Rights: LANDLORD shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors.

e. Policies Primary and Non-Contributory: All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

f. Proof of Coverage: LANDLORD shall immediately furnish certificates of insurance to COUNTY, evidencing the insurance coverage, including endorsements, above required prior to occupying the Premises and the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY, and LANDLORD shall maintain such insurance from the time of

occupancy and commencement of performance of services hereunder until the completion of such occupancy. Within sixty (60) days of the commencement of this agreement, the LANDLORD shall furnish certified copies of the policies and all endorsements.

g. Insurance Review: The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any such reduction or waiver for the entire term of the agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this agreement. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

h. Failure to Have Insurance: In the event COUNTY receives a notice of cancellation concerning any of the required policies, or should LANDLORD fail to have in effect the required coverage at any time during this Lease, COUNTY may give notice to LANDLORD to immediately suspend all LANDLORD activities on the Premises and/or notice to reinstate or acquire the affected coverage. Should LANDLORD fail to reinstate or acquire the affected coverage within ten (10) days of COUNTY's notice to reinstate or acquire such coverage, COUNTY, in its sole discretion, may either; (a) terminate this Lease immediately upon written notice to LANDLORD, or, (b) reinstate or acquire the affected coverage, in which case LANDLORD shall reimburse COUNTY for the sum paid to reinstate or acquire the coverage. The sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld.

i. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make it a partner or joint venturer with LANDLORD.

19. **DESTRUCTION OF PREMISES:**

a. During the term of this Lease, if any casualty renders a portion of the Premises unusable for the purpose intended, then LANDLORD shall, at LANDLORD's expense, restore the Premises

and repair any damages caused by such casualty as soon as reasonably possible and this Lease shall continue in full force and effect. If LANDLORD does not commence the restoration of the Premises in a substantial and meaningful way within thirty (30) days following the LANDLORD's receipt of written notice of the casualty, or should LANDLORD fail to diligently pursue completion of the restoration of the Premises, or if the time required to restore the Premises is estimated to exceed ninety (90) days, COUNTY may, at its option, terminate this Lease immediately upon written notice to the LANDLORD. If COUNTY elects to terminate this Lease pursuant to this provision, COUNTY shall be discharged of all future obligations under this Lease. Alternatively, if LANDLORD fails to commence the restoration of the Premises or fails to diligently pursue the completion of the restoration as aforesaid, COUNTY may, at its option and in its sole discretion, after notice to LANDLORD, perform LANDLORD's obligations and restore the Premises. If COUNTY elects to restore the Premises, COUNTY shall have the right to be reimbursed for all sums it actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. The sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld. For the purposes of this paragraph, the phrase "commence . . . in a substantial and meaningful way" shall mean either the unconditional authorization of the preparation of the required plans, the issuance of any required Building Permits or the beginning of the actual work on the Premises.

b. In the event there is a destruction of a portion of the Premises as set out in **subparagraph a above**, there shall be an abatement or reduction of the rent between the date of destruction and the date of completion of restoration or the date of termination of this Lease, whichever comes first. The abatement or reduction of the rent shall be in proportion to the degree to which COUNTY's use of the Premises is impaired.

c. In the event there is a destruction of a portion of the Premises as set out in **subparagraph a**, above, and the Lease is not terminated because of such destruction, LANDLORD agrees to use any and all insurance proceeds received for said destruction in the restoration of the Premises.

d. In the event LANDLORD is required to restore the Premises as provided in this paragraph, LANDLORD shall restore, at LANDLORD's expense, any structural or exterior improvements or alterations to the Premises made by COUNTY pursuant to **Paragraph 14, ALTERATIONS**, of this Lease, but shall not be responsible for restoring any shelving, fixtures, or interior nonstructural improvements or alteration made by the COUNTY pursuant to **Paragraph 15, FIXTURES**, of this Lease.

e. It is the purpose and intent of this paragraph to determine who shall bear the initial responsibility for restoration of the Premises in the event of any such destruction and not to determine the party ultimately responsible for the costs of such restoration.

20. **LANDLORD'S DEFAULT:** Except where another time limit is specifically provided, LANDLORD shall be in default of this Lease if LANDLORD fails or refuses to perform any material provisions of this Lease and such failure or refusal to perform is not cured within thirty (30) days following LANDLORD's receipt of written notice of default from COUNTY. If the default cannot reasonably be cured within thirty (30) days, LANDLORD shall not be in default of this Lease if LANDLORD commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default or, within thirty (30) days of the expiration of said time provided to LANDLORD to cure, the mortgagee or trust deed beneficiary commences to cure the default and diligently and in good faith continues to cure the default, including without limitation any time required for any such mortgagee or trust deed beneficiary to obtain possession of the Premises through foreclosure or otherwise, if such possession is required to cure such default. If COUNTY has received written notice from any mortgagee or trust deed beneficiary with an interest in any encumbrance affecting LANDLORD's interests in the Premises, which notice includes an address to which notices are to be delivered, COUNTY agrees to provide such mortgagee or trust deed beneficiary with notice of LANDLORD's default.

21. **COUNTY'S REMEDIES ON LANDLORD'S DEFAULT:** COUNTY, at anytime after LANDLORD is in default, can terminate this Lease immediately upon written notice to LANDLORD or can cure the default at LANDLORD's cost. If COUNTY at any time, by reason of LANDLORD's default, pays any sum or does any act that requires the payment of any sum (including charges for COUNTY's employees and equipment), the sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease.

22. **COUNTY'S DEFAULT:** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by COUNTY:

a. The vacating for more than thirty (30) consecutive days or abandonment of the Premises by COUNTY.

b. The failure by COUNTY to perform any material provisions of this Lease to be performed by COUNTY, including the payment of rent, where such failure shall continue for a period of thirty (30) days after notice by LANDLORD to COUNTY; provided, however, that if the nature of COUNTY's default is such that more than thirty (30) days are reasonably required for its cure, then COUNTY shall not be deemed to be in default if COUNTY commences such cure within said thirty

(30) day period and thereafter diligently prosecutes such cure to completion. The purpose of this notice requirement is to extend the notice requirements of the unlawful detainer statutes of California.

23. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT:**

a. In the event of any default by COUNTY, which is not cured by COUNTY, LANDLORD may, at its election, terminate this Lease by giving COUNTY thirty (30) days notice of termination. The purpose of this notice requirement is to extend the notice requirement of the unlawful detainer statutes of California. On termination of the Lease for default pursuant to this paragraph, LANDLORD shall have the right to recover from COUNTY only the following amounts for any and all damages, which may be the direct or indirect result of such default:

(1) The worth, at the time of the award, of the unpaid rent that has been earned at the time of termination of this Lease; and,

(2) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that LANDLORD proves could not have been reasonably avoided; and,

(3) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that LANDLORD proves could not have been reasonably avoided; and,

(4) Any other amount necessary to compensate LANDLORD for all detriment proximately caused by COUNTY's default which LANDLORD proves could not have been reasonably avoided.

(5) "The worth, at the time of the award," as used in **subparagraphs a(1) and a(2)** of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in **subparagraph a(3)** of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

b. Notwithstanding **subparagraph a**, above, on any termination of the Lease for default pursuant to this paragraph, the amount LANDLORD shall have the right to recover from COUNTY for any and all damages which may be the direct or indirect result of such default shall not exceed the amount LANDLORD would have been entitled to receive had the COUNTY terminated the Lease under **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE**.

24. **LANDLORD'S ACCESS TO PREMISES:** LANDLORD and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

a. To determine whether the Premises are in good condition; and,

b. To do any necessary maintenance and to make any restoration to the Premises that LANDLORD has the right or obligation to perform; and,

c. To serve, post, or keep posted any notices required by law; and,

d. To post "for sale" signs at any time during the term, to post "for rent" or "for Lease" signs during the last three (3) months of the term; and,

e. To show the Premises to prospective brokers, agents, buyers, tenants, lenders or persons interested in an exchange, at any time during the term.

LANDLORD shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY.

25. **NOTICES:**

a. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) COUNTY working days from the time of mailing if mailed as provided in this paragraph.

LANDLORD's address: A.K.S. and BEK Partnership, a General Partnership
5562 Santa Ana Canyon Road
Anaheim Hills, CA 92807

COUNTY's address: County of San Bernardino
Real Estate Services Department
825 East Third Street, Room 207
San Bernardino, CA 92415-0832

b. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a non-controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action.

c. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action. The new owner must provide COUNTY with evidence of completion of such action. The

parties shall immediately execute an amendment to this Lease stating the change of ownership of the Premises.

(1) Within fifteen (15) COUNTY working days of completing any action which affects a change in the ownership of the Premises, the new owner must provide COUNTY evidence of obtaining insurance in compliance with **Paragraph 18, INSURANCE**.

26. **INCORPORATION OF PRIOR AGREEMENT:** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

27. **WAIVERS:** No waiver by either party of any provisions of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

28. **AMENDMENTS:** No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Lease.

29. **SUCCESSORS:** This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

30. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Lease or any other portion thereof.

31. **TIME OF ESSENCE:** Time is of the essence of each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specific time for performance, performance may be made within a reasonable time.

32. **QUIET ENJOYMENT:** Subject to the provisions of this Lease and conditioned upon performance of all the provisions to be performed by COUNTY hereunder, LANDLORD shall secure to COUNTY during the Lease term the quiet and peaceful possession of the Premises and all right and privilege appertaining thereto.

33. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

34. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold, condition or delay such consent or approval.

35. **EXHIBITS:** All exhibits referred to are attached to this Lease and incorporated by reference.

36. **LAW:** This Lease shall be construed and interpreted in accordance with the laws of the State of California.

37. **VENUE:** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

38. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the COUNTY, including such costs and attorneys' fees payable under **Paragraph 17, HOLD HARMLESS, Paragraph 49, HAZARDOUS SUBSTANCES, and Paragraph 50, PUBLIC RECORDS DISCLOSURE.**

39. **JURY TRIAL WAIVER:** LANDLORD and COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either LANDLORD against COUNTY or COUNTY against LANDLORD on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of LANDLORD and COUNTY, COUNTY's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

40. **COUNTY'S RIGHT TO TERMINATE LEASE:** The COUNTY shall have the right to terminate this Lease at any time whenever COUNTY, in its sole discretion, determines it would be in COUNTY's best interests to terminate this Lease. COUNTY shall give LANDLORD notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. In the event COUNTY terminates this Lease pursuant to this paragraph, the LANDLORD shall have the right to receive from COUNTY only the following amounts under this Lease:

a. If on the date of termination, the COUNTY has been in possession of the Premises for at least seven (7) years after the date of commencement of the initial term of this Lease, the LANDLORD shall be entitled to the rent which will have been earned at the date of termination of this Lease.

b. If on the date of termination, the COUNTY has not occupied the Premises or has not been in possession of the leased Premises for at least seven (7) years after the date of commencement of the initial term of the Lease, the LANDLORD shall be entitled to the rent which will have been earned at the date of termination of this Lease and the amount of unpaid rent which would have been earned had the date of termination been on the date when the COUNTY would have been in

possession of the Premises for seven (7) years after the date of commencement of the initial term of this Lease.

c. If the LANDLORD has completed any agreed upon Improvements for COUNTY under **Paragraph 41, LANDLORD'S IMPROVEMENTS**, the LANDLORD shall be entitled to be reimbursed for that portion of the Improvements which have been completed and which have not been amortized on the date of termination.

d. The total amount which the LANDLORD is entitled to receive under this paragraph shall be paid in monthly installments equal to the monthly rent being paid at the date of termination. The installment payments under this paragraph shall commence on the date after the date of termination when the next monthly rent would have been due, and shall continue until the total amount is paid in full. No interest or service charge shall be added to the total amount due.

Unless specifically stated otherwise, the COUNTY's rental and reimbursement obligations under this paragraph are limited to a COUNTY termination of the Lease under this paragraph and do not apply to any termination pursuant to any other paragraph of the Lease.

41. **LANDLORD'S IMPROVEMENTS:**

a. LANDLORD, at its cost, agrees to make the improvements to the Premises set forth in Exhibit "A", Premises Specifications ("Improvements"). The Improvements shall be completed by the Commencement Date. LANDLORD shall, within ninety (90) days after the Commencement Date (or within ninety [90] days of any termination date if the termination date is prior to the Commencement Date), provide COUNTY receipts, invoices and other billing and/or accounting information necessary to verify the cost of all Improvements. The failure of LANDLORD to timely submit documentation to verify the cost of all Improvements shall waive LANDLORD's right to be reimbursed for the unamortized portion of such costs as provided in **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE, subparagraph 40c**. The costs of all Improvements made by LANDLORD pursuant to this paragraph shall be amortized over the initial term of this Lease regardless of the actual commencement date of the initial term. The monthly rent, as set out in **Paragraph 4, RENT**, shall be deemed to include a proportionate share of the amortized cost of the Improvements.

b. LANDLORD understands and agrees that from the time that this agreement is executed through the completion of the Improvements pursuant to Exhibit "A", Premises Specifications, and acceptance of the improved Premises by COUNTY, LANDLORD shall not assign or transfer a controlling interest in the Premises to a third party, without COUNTY's prior review and approval.

(1) LANDLORD understands and agrees to provide to COUNTY all documents and relevant information concerning any proposed transfer. COUNTY will have ten (10) COUNTY working days after receiving all such documents and information to complete its review. Upon COUNTY approval of an assignment or transfer, the parties shall immediately execute an amendment to this Lease stating the change of ownership of the Premises.

c. LANDLORD understands and agrees not to make any modifications to the improvement plans and specifications as set forth in Exhibit "A", Premises Specifications, without first obtaining approval in the form of an amendment to this Lease. Any changes to these plans and specifications, without first acquiring said approval, will be at the expense of the LANDLORD and not the COUNTY.

d. In the event LANDLORD contracts for the construction of any portion of the Improvements set forth in Exhibit "A", Premises Specifications, LANDLORD shall comply with the applicable portions of Labor Code Section 1720.2 and 1770 et seq. regarding general prevailing wages.

e. LANDLORD, at its sole expense, must provide all site plans (including elevations of the building and details of the exterior finish), space design plans and construction plans. LANDLORD agrees and understands that it will construct on the Premises during the period immediately following execution of this Lease, those Improvements shown on the space design and site plans prepared by LANDLORD and approved by COUNTY. The Improvements shall be constructed in accordance with **Paragraph 11, HEALTH, SAFETY AND FIRE CODE REQUIREMENTS**, and Exhibit "A", Premises Specifications.

f. LANDLORD and COUNTY agree that the Improvements are projected to be constructed, completed and certified for occupancy by the City of Redlands by July 1, 2005, and that the COUNTY must be able to occupy the improved Premises no later than September 1, 2005. In order to meet the projected occupancy date, the parties have agreed upon the following Project Construction Schedule setting forth the essential elements of construction, the projected completion date(s), and the critical completion date(s) are as follows:

(1) Construction of Tenant Improvements and Certified for Occupancy: Projected Completion Date: July 1, 2005, Critical Completion Date: September 1, 2005.

g. LANDLORD agrees that its failure to meet the above Critical Completion Date will mean that the COUNTY will not be able to occupy the improved Premises by September 1, 2005, and that the COUNTY may therefore elect to terminate this Lease in the event the LANDLORD fails to meet any of said dates. Any such election to terminate by the COUNTY must be in writing and given to LANDLORD within thirty (30) COUNTY working days of the missed Critical Completion Date.

h. LANDLORD agrees to provide the COUNTY a written progress report every thirty (30) days. The report shall contain up-date information of construction progress and notification of any permit approval. LANDLORD shall immediately notify COUNTY of the completion of every element in the Project Construction Schedule.

i. LANDLORD acknowledges that late delivery of the Premises to COUNTY will cause COUNTY to incur costs not contemplated by this Lease agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if LANDLORD does not deliver the improved Premises by July 1, 2005, LANDLORD agrees to liquidated damages of Two Hundred and /00 Dollars (\$200.00) for each day's delay from July 1, 2005, to the date the COUNTY accepts the

Premises or terminates this Lease agreement. The parties agree that this charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late delivery. Acceptance of any charge shall not constitute a waiver of LANDLORD's default or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY.

j. Notwithstanding **subparagraphs "f", "g" and "i", above**, in the event LANDLORD, after exercising all due diligence, is unable to meet any of the above mentioned Critical Completion Dates due to reasons which LANDLORD proves are outside the control of LANDLORD, such reasons include but are not limited to acts of God, unreasonable acts of governmental agencies causing unavoidable delays (the normal and reasonable times for review, action and reasonably anticipated delays by governmental agencies are already included in the timing of the Critical Completion Dates), strikes, or labor troubles, then the Critical Completion Dates(s) shall be extended for a period equivalent to the period of such delay.

(1) As soon as LANDLORD becomes aware, or should in the exercise of due diligence have become aware of any facts or circumstances that may or will cause such a delay, LANDLORD shall immediately notify COUNTY of any such delay or anticipated delay. In the event LANDLORD fails to timely notify COUNTY of any such delay or anticipated delay, LANDLORD, notwithstanding the main portion of this **subparagraph "j" above**, shall be subject to **subparagraph "i"**, above, for the entire length of any delay.

42. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE:** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretations.

43. **SURVIVAL:** The obligations of the parties that, by their nature, continue beyond the term of this Lease, will survive the termination of this Lease.

44. **FORMER COUNTY OFFICIALS:** LANDLORD agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent LANDLORD. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "C", List of Former County Officials.)

45. **BROKER'S COMMISSIONS:** LANDLORD is solely responsible for the payment of any commissions to any broker who has negotiated or otherwise provided services in connection with this Lease.

46. **ESTOPPEL CERTIFICATES:** Each party within thirty (30) days after notice from the other party, shall execute and deliver to other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of minimum monthly rent, the dates to which the rent has been paid in advance, the amount of any security deposit or prepaid rent, and that there are no uncured defaults or specifying in reasonable detail the nature of any uncured default claimed. Failure to deliver the certificate within thirty (30) days shall be conclusive upon the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate, and that there are no uncured defaults on the part of the party requesting the certificate. The estoppel certificate shall be in the form as shown in Exhibit "D", Estoppel Certificate.

47. **SUBORDINATION AND ATTORNMENT:**

a. As a condition precedent to the COUNTY's obligations under this Lease, LANDLORD shall obtain from each holder of a lien or encumbrance on the Premises which is senior to this Lease either an executed recordable subordination agreement which subordinates such lien or encumbrance to this Lease, or a non-disturbance agreement which contains terms at least as favorable to the COUNTY as those set forth in paragraph 2 ("Nondisturbance") of Exhibit "E", Subordination, Nondisturbance and Attornment Agreement, hereto.

b. If, after execution of this Lease, a subsequent lienor requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance if, and only if, LANDLORD first obtains from the subsequent lienor an executed subordination, nondisturbance and attornment agreement, the terms of which are at least as favorable to the County as those set forth in Exhibit "E", Subordination, Nondisturbance and Attornment Agreement hereto. If the COUNTY's County Counsel approves the form of a subordination, nondisturbance and attornment agreement pursuant to this subparagraph, and if such agreement is executed by the subsequent lienor, then the head of the COUNTY's Real Estate Services Department is authorized on behalf of the COUNTY to, and shall, execute such agreement, and shall further execute any other documents required by the lender to accomplish the purposes of this paragraph, provided such other documents are consistent with the terms of the subordination, nondisturbance and attornment agreement and this Lease.

48. **IN-KIND AND COST SHARING REPORTING:** As a condition of this lease, LANDLORD shall provide reports to COUNTY for in-kind services, including volunteer services, playground and/or play equipment on an annual basis per program year, as part of the Preschool Services Department's non-federal share of costs for Federal funding. These reports are required by the U.S. Department of Health and Human Services – Head Start Program Performance Standards, 45-CFR-1304.

a. "Third party in-kind contribution means property or services which benefit a grant supported project or program and which are contributed by non-Federal third parties without charge to the grantee, subgrantee or a cost-type contractor under the grant or subgrant." (HDS-Attachment-A, Title 45: Subpart G:74.51).

b. "Third party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs." (HDS-Attachment-A, Title 45: Subpart G:74.53).

c. The parties agree the annual contributions are as follows:

Playground:	10,300 sq.ft. - \$24,720.00 per year (\$.20 sq.ft./per month)
Parking lot:	12,132 sq.ft. - \$29,117.00 per year (\$.20 sq.ft./per month)
Total:	22,432 sq.ft. - \$53,837.00 per year

49. **HAZARDOUS SUBSTANCES:**

a. LANDLORD hereby represents and warrants that, to the best of LANDLORD's knowledge, information and belief: (i) the Premises have not been exposed to Hazardous Substances and are presently free of all Hazardous Substances; (ii) neither the LANDLORD nor any of the other current tenants, if any, on the property of which the Premises forms a part is in violation or subject to an existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation, ordinance or other legislation pertaining to air, water, or soil quality or the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances; (iii) any handling, transportation, storage, treatment or use of toxic or Hazardous Substances to date has been in compliance with applicable laws; and (iv) no reportable use has occurred on the Premises to date, and the soil, groundwater and vapor on or under the Premises is free of Hazardous Substances as of the Commencement Date.

b. LANDLORD shall indemnify, protect, defend and hold COUNTY, its agents and employees and the Premises, harmless from and against any and all losses and/or damages, liabilities, judgments, costs, claims, expenses, penalties, including attorneys' and consultant's fees, arising out of or involving the existence of any Hazardous Substances located in, about or under the Premises prior to the Commencement Date of this Lease. LANDLORD's obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by COUNTY, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. LANDLORD's obligations under this provision shall survive the expiration or early termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and LANDLORD shall release LANDLORD from its obligations under this Lease with regard to Hazardous Substances unless specifically agreed to by COUNTY in writing.

c. For the purposes of this paragraph, the following definitions shall apply:

(1) "Hazardous Substance," as used in this Lease, shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of LANDLORD or COUNTY under any applicable statute or common law theory.

(2) "Reportable use" shall mean (i) the installation or use of any above- or below-ground storage tank; (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties.

(3) The term "applicable requirements" shall be deemed to refer to all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances.

50. **PUBLIC RECORDS DISCLOSURE:** All information received by the COUNTY from the LANDLORD or any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). LANDLORD understands that although all materials received by the COUNTY in connection with this Lease are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a LANDLORD has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the LANDLORD of the request and shall thereafter disclose the requested information unless the LANDLORD, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the COUNTY harmless in any/all actions brought to require disclosure. LANDLORD waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LANDLORD of any such disclosure request and/or releases any information concerning the contract received from the LANDLORD or any other source.

51. **CONDITION OF PREMISES:** LANDLORD shall deliver the Premises to COUNTY clean and free of debris on the Commencement Date and warrants to COUNTY that the plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems and loading doors, if any, in the Premises shall be in good operating condition on the Commencement Date.

52. **CONDEMNATION:** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas or that portion of the Premises designated for COUNTY's parking, is taken by condemnation, COUNTY may, at COUNTY's option, to be exercised in writing within thirty (30) days after LANDLORD shall have given COUNTY written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If COUNTY does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of rent shall occur if the condemnation does not apply to any portion of the Premises. COUNTY shall be entitled to receive the following amounts of any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power: (a) one hundred percent (100%) of any amount attributable to any excess of the market value of the Premises for the remainder of the Lease Term over the present value as of the Termination Date of the Rent payable for the remainder of the Lease Term (commonly referred to as the "bonus value" of the Lease); and (b) COUNTY shall have the right to make a separate claim in the Condemnation proceeding for: (i) The taking of the amortized or undepreciated value of any trade fixtures or leasehold improvements owned

by COUNTY that COUNTY has the right to remove at the end of the Lease term and that COUNTY elects not to remove; (ii) Reasonable removal and relocation costs for any trade fixtures or leasehold improvements that COUNTY has the right to remove and elects to remove (if Condemnor approves of the removal); (iii) Loss of goodwill; (iv) Relocation costs under Government Code section 7262, the claim for which COUNTY may pursue by separate action independent of this Lease; and (v) Any other amount in addition to the foregoing that the COUNTY is allowed under condemnation law. COUNTY shall have the right to negotiate directly with Condemnor for the recovery of the portion of the Award that COUNTY is entitled to under **subparagraph (b)** of this paragraph. In the event that this Lease is not terminated by reason of such condemnation, LANDLORD shall repair any damage to the Premises caused by such condemnation authority pursuant to **Paragraph 13, MAINTENANCE**, and **Paragraph 19, DESTRUCTION OF PREMISES**.

53. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this lease, the COUNTY determines that the LANDLORD has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this lease may be immediately terminated. If this lease is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

54. **INTERPRETATIONS:** As this agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

* * * * *

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55. **AUTHORIZED SIGNATORS:** Both parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

END OF LEASE TERMS.

COUNTY OF SAN BERNARDINO

**LANDLORD: A.K.S. and BEK
Partnership, a General Partnership**

Dennis Hansberger, Chairman, Board of Supervisors

By:_____
Ron Shahbandi

Dated:_____

Title: Partner

Dated:_____

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

J. RENEE BASTIAN, Clerk of the Board
of Supervisors

By:_____
Deputy

Date:_____

Approved as to Legal Form:
RONALD D. REITZ, County Counsel

By:_____
Fiona Luke, Deputy

Dated:_____

EXHIBIT "A"
PREMISES SPECIFICATIONS

EXHIBIT “B”
SAN BERNARDINO COUNTY - LICENSED
MAINTENANCE CONTRACTOR SERVICES

The following services are to be performed by a licensed maintenance contractor.

WEEKLY SERVICE:

1. Contract with a mat service to supply and replace interior entry mats with cleaned mats.
2. Replace light bulbs and tubes inside building when needed.

ONCE-MONTHLY SERVICE:

1. Licensed pest control.

EVERY THREE MONTHS:

1. Wash exterior and interior windows and partitions.

EXHIBIT "C"

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the LANDLORD, the date the Official entered LANDLORD's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

EXHIBIT "D"

ESTOPPEL CERTIFICATE

Date: _____

To: _____

Re: _____, _____
(address) (city)

The undersigned ("County") hereby certifies as follows:

1. County is in possession of _____, _____, California (the "Premises"). County leases the Premises under a written Lease agreement dated _____, 20____, Lease Agreement No. _____ (the "Lease"), wherein County is the lessee or tenant, and _____, ("Owner") is the lessor or landlord.

2. The Lease is in full force and effect and has not been amended, supplemented or changed, except as follows:

3. The term of the Lease commenced on _____, 20____, and is scheduled to expire _____, 20__. County has no right or option to renew or extend the term of the Lease except as to the following: _____ (____) _____-year options.

4. County's current monthly rental is \$_____.____, payable on the last day of each month.

5. County currently has no security deposit with Owner.

6. County is not in default under the terms of the Lease and no condition exists which, with the passage of time or the giving of notice, or both, would constitute such a default. To the best of County's knowledge, Owner is not in default under the terms of the Lease, and no condition exists which, with the passage of time or the giving notice, or both, would constitute such a default.

7. County hereby certifies that the foregoing is true and correct.

County of San Bernardino

By: _____

David H. Slaughter

Director

Real Estate Services Department

EXHIBIT "E"

RECORDED AT REQUEST OF
AND TO BE RETURNED TO:

Attn: _____

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is entered into this _____ day of _____ 20__, by and between _____ ("Tenant"), and _____ ("Lender").
(name) (type of entity)

Recitals

A. Tenant entered into a certain Lease Agreement, dated as of _____, 20__ (the "Lease"), between Tenant, as lessee, and _____, _____ ("LANDLORD"), as lessor, pertaining to that certain premises commonly known as _____, _____, California _____ (zip code), as more particularly described in the Lease ("Premises"), located on that certain real property located in the County of San Bernardino, State of California, as more particularly described in Exhibit "A", attached hereto and incorporated herein (the "Property"). Original LANDLORD shall be referred to as "Borrower".

B. Borrower made, executed and delivered, or is about to make, execute and deliver to Lender a certain promissory note, dated substantially contemporaneously herewith ("the Note"), in the original principal sum of \$_____. The obligations evidenced by the Note shall be referred to as the "Loan". The Note is executed pursuant to the terms of a certain Construction Loan Agreement, dated substantially contemporaneously herewith (the "Loan Agreement"), between Lender and LANDLORD.

C. Borrower has executed and delivered, or is about to execute and deliver to Lender, a certain Deed of Trust and Assignment of Rents, dated substantially contemporaneously herewith (the "Deed of Trust"), encumbering the Property to secure the Loan.

D. It is a condition precedent to the Loan that the Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the Lease.

- E. It is a condition precedent to the Loan that Tenant will specifically and unconditionally subordinate and subject the Lease, together with all rights and privileges of Tenant thereunder, to the lien or charge of the Deed of Trust.
- F. It is to the mutual benefit of the parties hereto that Lender and Borrower enter into the Loan.

Covenants

In consideration of the recitals set forth above and the covenants and agreements contained herein, the parties agree as follows:

1. **Subordination:** Tenant hereby subordinates all of Tenant's right, title, interest and leasehold estate in and to the Premises to the lien, operation, and effect of the Deed of Trust.
2. **Nondisturbance:** Tenant's peaceful and quiet possession of the Premises shall not be disturbed and Tenant's rights and privileges under the Lease, including but not limited to the provisions of the Lease set forth under the headings "TERM," "EXPANSION OF RENTAL SPACE," "OPTION TO EXTEND TERM," "HOLD HARMLESS," "INSURANCE," "DESTRUCTION OF PREMISES," "COUNTY'S RIGHT TO TERMINATE LEASE," and "CONDEMNATION," shall not be diminished by Lender's foreclosure, acceptance of a deed in lieu of foreclosure, or any other exercise of Lender's rights or remedies under the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans. All of the provisions of the Lease shall prevail over any conflicting provisions in the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans. Tenant shall not be named or joined in any foreclosure, trustee's sale, or other proceeding or action to enforce the Deed of Trust, the Note, the Loan Agreement, any other loan document, unless such joinder shall be legally required to perfect such foreclosure, trustee's sale, or other proceeding or action.
3. **Attornment:** If the Deed of Trust is foreclosed for any reason, or LANDLORD deeds the Property to Lender in lieu of foreclosure, the Lease shall not be extinguished and Tenant shall be bound to Lender under all the terms, covenants, and conditions of the Lease for the balance of the term of the Lease with the same force and effect as if Lender was the lessor under the Lease. Tenant shall attorn to Lender as Tenant's Lessor, and agrees to recognize Lender as the new owner and promises to pay the rent to Lender as LANDLORD. This attornment shall be effective and self-operative, without the execution of any other instruments on the part of any of the parties to this Agreement, immediately upon Lender succeeding to the interest of LANDLORD under the Lease.
4. **Disbursements:** Lender is under no obligation or duty to monitor the application of the proceeds of the Loan. Any application of such proceeds for purposes other than those provided for in the Loan Agreement or any of the other Loan Documents shall not defeat the effect of this Agreement in whole or in part.
5. **Acknowledgment of Assignment:** Tenant acknowledges and consents to the assignment of LANDLORD's rights under the Lease to Lender pursuant to a certain Assignment of Leases (the "Assignment"). Tenant shall pay rent to Lender upon receipt of written notice from Lender that Lender has revoked the waiver of LANDLORD's right to receive the rents from the Premises pursuant to the Assignment, notwithstanding the fact that Lender has not foreclosed the Deed of Trust, nor succeeded to the interest of LANDLORD under the Lease. Tenant shall not be liable to LANDLORD for any payments made to Lender hereunder.

6. Assignment or Sublease: Tenant may assign or sublease all or any portion of the Property in accordance with the Lease, but no such assignment, transfer, or subletting shall relieve Tenant of any of its obligations under the Lease. Tenant hereby covenants that the Lease has not been modified or altered. Tenant shall not enter into or agree to any amendment or modification to the Lease with LANDLORD, without the prior written consent of Lender. Tenant shall not voluntarily subordinate or subject the Lease or any interest therein to any lien or encumbrance without the prior written consent of Lender, unless said lien or encumbrance shall relate to personal property that can be removed without damage to the Premises, or unless such subordination is required by the Lease.

7. Notices: Tenant shall deliver to Lender a copy of all notices, requests, or demands delivered by Tenant to LANDLORD in accordance with this Paragraph. Tenant shall also deliver to Lender any and all notices, demands, or requests received by Tenant from LANDLORD relating to any of the aforesaid. Lender shall deliver to Tenant all notices, requests or demands in accordance with this Paragraph. All notices required hereunder or pertaining hereto shall be in writing and shall be deemed delivered and effective upon the earlier of (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by express courier service or United States mail, postage prepaid, certified or registered, return receipt requested; or (iii) the date of delivery if such notice is sent by facsimile, in each case, to the applicable address as follows:

to Tenant: County of San Bernardino
Real Estate Services Department
825 East Third Street
San Bernardino, California 92415-0832
Facsimile No.: (909) 387-7833

to LANDLORD: _____

Attn: _____

Facsimile No.: _____

to Lender: _____

Attn: _____

Facsimile No.: _____

Notwithstanding the foregoing, any notice under or pertaining to this Agreement, given and effective in accordance with applicable law, shall be effective for purposes hereof. Any party may change the address at which it is to receive

notices hereunder to another business address within the United States (but not a post office box or similar mail receptacle) by giving notice of such change of address in accordance herewith.

8. LANDLORD's Default: Tenant hereby agrees that Tenant will notify Lender in writing, in accordance with **Paragraph 7 above**, of any default by LANDLORD under the terms of the Lease and Tenant shall not cancel or terminate, or acquiesce to the cancellation or termination of the Lease without giving Lender a reasonable period (not less than 30 days) after delivery of such notice to cure the default; Lender's rights and remedies under the Loan Agreement or any of the Loan Documents (as defined in the Loan Agreement) shall not be prejudiced by its exercise or failure to exercise the right to cure described above. Except for LANDLORD's defaults under **Paragraph 3, "TERM"**, of the Lease, relating to LANDLORD's failure to meet the Critical Completion Dates as set forth in Exhibit "A", Page 4, Schedule of Completion, if Lender elects within such thirty (30) day period to foreclose on the Deed of Trust, such time period shall be extended so that Lender shall have a reasonable period within which to foreclose the Deed of Trust and shall have an additional thirty (30) days from the time Lender becomes owner of the Property through foreclosure within which to cure such default. If any default by LANDLORD is cured within the time periods described above, Tenant shall have no right to terminate the Lease by virtue of such default.

9. Binding Effect: This Agreement shall be binding upon the parties and their respective heirs, personal representatives, successors, and assigns.

10. Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

11. Jury Trial Waiver: The parties hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by any party against the other on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of the tenant to the borrower or the borrower to the tenant, tenant's use or occupancy of the Property, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

12. Attorneys' Fees and Costs: If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Lease **Paragraph _____, "HOLD HARMLESS"**.

13. Venue: The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

14. Counterparts: This Agreement may be executed by the parties in counterparts, and when any one or more copies of this Agreement have been executed by all of the parties, this Agreement shall be effective, and all of such copies shall be deemed and construed to be one agreement.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Tenant:

Lender:

COUNTY OF SAN BERNARDINO:

Chairman, Board of Supervisors

By: _____
(Name)

Date: _____

Title: _____

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Date: _____

J. RENEE BASTIAN, Clerk of the
Board of Supervisors

LANDLORD:

By: _____
Deputy

By: _____

Date: _____

Title: _____

Approved as to Legal Form:

ALAN K. MARKS, County Counsel
San Bernardino County, California

Date: _____

By: _____
Deputy

Date: _____

